

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JIMMY QUINTIN GREEN,

Petitioner,

Case No. 03-80016

v.

Honorable John Corbett O'Meara

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING PETITIONER'S MOTION TO PROCEED *IN FORMA PAUPERIS*

Before the court is Petitioner's motion that the court construes as a certificate of appealability and application to proceed *in forma pauperis*, filed June 19, 2008. On August 8, 2006, the court denied Petitioner's request for relief pursuant to 28 U.S.C. § 2255. On June 10, 2008, the court denied Petitioner's motions for reconsideration of the judgment and his Fed. R. Civ. P. 60(b)(3) motion.

Fed. R. App. P. 22(b) states that the court must either issue a certificate of appealability in this instance or state why a certificate should not issue. The court may issue a certificate of appealability if petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 22553(c)(2); Hence v. Smith, 49 F.Supp.2d 547, 549 (E.D. Mich. 1999).

The court finds that Petitioner failed to make a substantial showing of the denial of a constitutional right. Petitioner notified the court that he would appeal the denial of his motion for relief pursuant to Fed. R. Civ. P. 60(b)(3). However, Petitioner fails to raise any issues for appeal, much less issues that are debatable among jurists of reason. Id. Accordingly, the request for a certificate of appealability is DENIED.

The court will also consider whether to grant Petitioner *in forma pauperis* status on appeal. The court may grant *in forma pauperis* status if it finds the appeal is being taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. R. 24(a); Foster v. Ludwick, 208 F.Supp. 2d 750, 765 (E.D. Mich. 2002). Good faith defined is a showing that the issues raised are not frivolous. Id. As such, the court DENIES Petitioner leave to appeal *in forma pauperis* because the appeal would be frivolous. See Allen v. Stovall, 156 F.Supp.2d 791, 798 (E.D. Mich. 2001).

SO ORDERED.

s/John Corbett O'Meara
United States District Judge

Date: September 19, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, September 19, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager